



NATIONAL ASSOCIATION  
OF REALTORS®

*The Voice for Real Estate®*

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April 15, 2004

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
4455 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

**Re: CG Docket No. 02-278 National Do-Not-Call Registry and Monthly Updates by  
Telemarketers, 69 *Federal Register* 62, 16873-16886 (March 31, 2004)**

Dear Ms. Dortch:

The NATIONAL ASSOCIATION OF REALTORS® (NAR) appreciates this opportunity to comment on the Federal Communications Commission's (FCC) proposed amendments to the rules and regulations implementing the Telephone Consumer Protection Act of 1991 (TCPA) to require monthly updating of call lists against the Do-Not-Call Registry (Registry). The NAR is America's largest trade-membership association representing 1 million members, including NAR's institutes, societies and councils, involved in all aspects of the residential and commercial real estate industries and therefore has a significant interest in the outcome of this rulemaking process.

In this rulemaking the FCC is seeking comment on whether the agency should amend its safe harbor provisions under TCPA to mirror an amendment made by the Federal Trade Commission (FTC) to its Telemarketing Sales Rule (TSR) requiring telemarketers to scrub their call lists once a month. As noted in the rule proposal, the FCC is not under the same congressional mandate via the Consolidated Appropriations Act of 2004 that the FTC is under to promulgate a monthly scrub rule. Nevertheless, the FCC in issuing this rule proposal, is relying on the Do-Not-Call Implementation Act whereby Congress directed agency to consult and coordinate with the FTC to "maximize consistency" with the TRS.

NAR understands that consistency between the FTC's and FCC's Do-Not-Call Registry rules are important to negate confusion regarding the applicability and enforcement requirements. We further recognize Congress' directive to the FTC and FCC to harmonize their respective Registry regulations. However, we renew our opposition to the monthly update requirement based on the lack of full congressional consideration of the issue and that the mandate to the FTC to finalize such a rule was given without benefit of hearings on the feasibility and practicality of implementation. In this regard, NAR respectfully requests the FCC to consider our arguments in

support of our opposition to the FTC's rule requiring monthly updating of call lists against the Registry, which is attached as an addendum to this comment letter.

### **“No More Than 30 Days” (FCC proposed rule) v. “No More Than 31 Days” (FTC final rule)**

Although NAR opposes mandated monthly scrubbing of call lists due to the onerous and costly compliance burdens for Realtor-owned small businesses, we believe that if the FCC amends its Registry rules to require monthly updates, it must adopt the FTC's standard requiring telemarketers to “use a version of the National Do-Not-Call Registry obtained from the Commission no more than thirty-one (31) days prior to the date any call is made.”<sup>1</sup>

NAR remains concerned that the FTC rules are ambiguous as to whether callers must actually download the full Do-Not-Call list no more than thirty-one (31) days prior to the date any call is made or if simply accessing the new numbers that have been added since the last access date would suffice. It is our desire that the latter be permitted. It would be far more efficient to allow sellers and telemarketers to simply focus on the additions to the Registry rather than require the entire list, most of which would have already been used to scrub the caller's phone lists, to be downloaded each time. We would ask the FCC to clarify this issue in its final rule.

Another outstanding issue that we believe is in need of clarification concerns sellers and telemarketers who use only the interactive search feature of the Do-Not-Call Registry. The rule as proposed indicates that sellers or telemarketers must maintain records documenting that the caller has employed “a version of the ‘do-not-call’ registry obtained from the Commission no more than thirty-one (31) days prior to the date any call is made.”<sup>2</sup> When a seller or telemarketer downloads the list and/or receives the updated list via e-mail, the seller or telemarketer has documentation noting dates and times of the download to support his or her compliance with the regulation. However, interactive-only users of the Registry are not given any means of documenting their compliance. We request the FCC to address this oversight when finalizing this rule.

### **Effective Date**

NAR urges the FCC to recognize that sellers and telemarketers need an extended period of time to make the necessary modifications to their systems and procedures in order to comply with the requirement to update their call lists every month. Since the FTC has already established a January 1, 2005 effective date for their monthly update requirement and given the FCC's mandate to harmonize its Registry rules, NAR believes it is at disadvantage in advocating for a one-year effective date. However, we ask the FCC to consider the following important issue, which we advanced with the FTC in support of a delayed effective date:

- *Sellers and telemarketers need sufficient time to make the necessary modifications to their newly established “scrubbing” processes. Sixty-five percent of the NAR membership is composed of small firms with 5 or fewer agents per office. These small*

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<sup>1</sup> 69 *Federal Register* 60, 16367-16374 (March 29, 2004).

<sup>2</sup> *Id.*

offices have already experienced increases in operating expenses due to the changes in office practice required to comply with the new rules in 2003. Some firms have seen an increase in the labor costs resulting from internal efforts to scrub calling lists while others have had to absorb the costs involved with employing the services of third parties to do that job. Given the relative newness of the Registry, we do not yet have data to quantify the cost burden on the real estate industry. We do know, however, that costs have been imposed and many firms have yet to find the most cost effective and efficient means of complying with the rule's requirements. The new requirements will impose additional costs for which these firms should have the opportunity to plan and budget.

Furthermore, NAR believes it is critical that the FCC work with the FTC to address the following Registry issues, which are important concerns for REALTORS®:

- *The Do-Not-Call Registry is not free from the technological “glitches” associated with new programs.* REALTOR® staffs at the national, state and local association levels have taken a very large number of calls from REALTORS® intent on complying with the new regulations since the Do-Not-Call Registry was activated. It is clear from these calls that the Registry continues to present problems for users in the areas of registration, accessing the information once a password is provided and troubleshooting. Currently, the only means of assistance available to a registered seller or telemarketer is to e-mail questions to the FTC. Questions are then categorized and the caller is sent a standard response that best fits that problem category. Sometimes the questions asked or the specific problems encountered are not addressed in the stock of standard responses. Currently, there is no other help option available to the seller or telemarketer. The FTC should establish a system that permits sellers and telemarketers, when necessary, to speak with an expert familiar with the Registry technology to help guide them through these problem areas.
- *Reassess the pricing structure to eliminate an existing pricing inequity that penalizes small businesses.* Currently five or fewer area codes are provided free of charge and each additional area code above five costs the seller \$25.00. This pricing structure assumes a direct relationship between the number of area codes required and the number of calls made to each area code. However, this is not always the case. For example, many real estate agents and brokers often have the need to call a limited number of consumers who reside in a variety of states and/or area codes beyond their primary 5-area code local calling region. This is especially the case for agents and brokers who work in resort communities. It is common for these professionals to find themselves forced to pay for access to a number of additional area codes in order to research a single phone number in each area code. This is the case while, at the same time, a company who relies heavily on telemarketing, and makes thousands of calls to consumers but limits these calls to within the 5-code area, does not have to pay a fee. We believe some additional consideration should be given to this obvious inequity that can have serious cost consequences for small businesses.

Despite the FTC's January 1, 2005 effective date, NAR believes a longer implementation period will: (1) allow sellers and telemarketers enough time to absorb the costs already incurred, plan

and budget for the additional costs that will be incurred with a monthly update requirement and thereby minimize the burden associated with such changes on the affected parties, especially small businesses, and (2) afford the FCC the opportunity to consult with the FTC to assess the current workings of the Registry and make any modifications necessary to insure the smooth and equitable functioning of the Registry system.

I thank you for the opportunity to present the views of the National Association of REALTORS®.

Sincerely,

**/s/**

Joseph M. Ventrone  
Managing Director  
Regulatory and Industry Relations Department

Attached: CG Docket No. 02-278 National Do-Not-Call Registry and Monthly Updates by  
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**CG Docket No. 02-278 National Do-Not-Call Registry and Monthly Updates by  
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**Opposition to Once a Month Requirement to “Scrub” Call Lists**

When the FTC originally proposed the Telemarketing Sales Rule (January 30, 2002), the agency included a provision to require telemarketers to obtain an updated version of the Do-Not-Call Registry not more than 30 days before calls are made to consumers. During the rulemaking process, the affected industries were successful in pointing out to the FTC that the 30-day requirement was overly burdensome and also a detriment to small businesses. As a result, the FTC in the final Telemarketing Sales Rule (January 29, 2003) adopted a provision requiring sellers and telemarketers to reconcile or “scrub” their call lists every three months noting, “the Commission is persuaded that the costs of requiring monthly updating outweigh any additional benefits that might accrue to consumers from such a provision.”

Well before the date of implementation of the Registry, the House of Representatives adopted H.R. Report No. 108-221 (July 21, 2003) making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 2004. As part of that report supplementing the Federal Trade Commission’s budgetary authority, conferees required: (1) the GAO to study the implementation of the Do-Not-Call program and determine whether the Commission is achieving its goals; and (2) the FTC promulgate a rule requiring sellers and telemarketers to obtain updated lists from the agency “on the first day of each month.” Similar requirements were conspicuously absent from the Senate Report No. 108-144 (September 5, 2003) making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 2004.

The issue of monthly updates did not surface again until January 23, 2004 when the President signed into law the Consolidated Appropriations Act of 2004, which included a provision mandating the FTC to promulgate a rule (within 60 days) requiring sellers and telemarketers to obtain the list of phone numbers on the Registry once a month. This provision, which will significantly impact many very small businesses, was already vetted in a public forum (i.e. comments during FTC’s 2002 Telemarketing Sales Rule proposal) and responded to accordingly. Nevertheless, Congress has acted without the benefit of hearings on the feasibility and practicality of requiring sellers and telemarketers to “scrub” their call lists once a month. In this regard, we would urge the following:

- The FTC investigate the volatility and stability of consumer participation in the Do-Not-Call Registry. If the number of names on the registry has stabilized enough that there may not be a need for frequent updating, we would ask the FTC to make recommendations to Congress to not renew its “once a month” mandate in FY2005 appropriations measures when the current provision (Consolidated Appropriations Act of 2004) expire on September 30, 2004.
- The FTC support hearings on the feasibility and practicality of additional requirements for sellers and telemarketers beyond what was outlined in the adopted Do-Not-Call Implementation Act (H.R. 395, February 13, 2003) or the agency’s final Telemarketing Sales Rule. When Congress adopted Do-Not-Call Implementation Act, the accompanying report (H.R. Report No. 108-8) stated that the Committee on Energy and Commerce “is committed to holding hearings during the 108<sup>th</sup> Congress to better understand how these different do-not-call regulatory regimes can best be coordinated to protect consumers in a manner that is *fair and balanced to industry participants*.” (Emphasis added). To date, such hearings have not been held. It is important that before mandating additional burdensome requirements, Congress hear from both consumers and industry as to whether or not a “fair and balanced” approach has been achieved.

The NAR stands ready to work with the FTC on all aspects of our concerns regarding Congress’ requirement for sellers and telemarketers to “scrub” their call lists once a month.